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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-
defendant

v.

APPLE INC.,

Defendant,
Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF RACHEL S. BRASS IN
SUPPORT OF DEFENDANT APPLE INC.'S
ADMINISTRATIVE MOTION TO SEAL
EXHIBITS PX-1017 AND PX-2946**

1 I hereby declare as follows:

2 1. I am an attorney licensed to practice in the State of California, and a member of the Bar
3 of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for
4 Defendant Apple Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary
5 and confidential information, based on my personal experience representing Apple.¹ I have personal
6 knowledge of the facts stated below and, if called as a witness, I could and would testify competently
7 thereto. I submit this declaration in support of Apple’s Administrative Motion to Seal Exhibits PX-
8 1017 and PX-2946.

9 2. When a party seeks to seal records for use at trial, there is a “strong presumption in favor
10 of access” that can be overcome only by “compelling reasons.” *Kamakana v. City & County of*
11 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quotation marks omitted). The party seeking to seal
12 the document or proceedings must “articulate compelling reasons supported by specific factual findings
13 that outweigh the general history of access and the public policies favoring disclosure.” *Id.* at 1178–
14 79 (alteration, citation, and quotation marks omitted). “In general, ‘compelling reasons’ sufficient to
15 outweigh the public’s interest in disclosure and justify sealing court records exist when such ‘court
16 files might have become a vehicle for improper purposes,’ such as the use of records to gratify private
17 spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179
18 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

19 3. Apple operates in an intensely competitive marketplace. It occupies a unique position
20 as a leader with respect to a number of highly dynamic technologies. Apple has serious and legitimate
21 concerns that competitors will be quick to pounce on any release of Apple’s highly sensitive,
22 proprietary information in order to gain competitive advantage. As such, Apple takes extensive
23 measures to protect the confidentiality of its proprietary information.

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26 ¹ Courts in this District routinely grant motions to seal on the basis of declarations of counsel. *See,*
27 *e.g., In Re Qualcomm Litig.*, No. 17-00108, Dkt. 398-1 (S.D. Cal. Mar. 3, 2018); *Avago Techs. U.S.*
28 *Inc., et al. v. Iptronics Inc., et al.*, No. 10-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco*
Sys., Inc., et al. v. Opentv Inc., et al., No. 13-00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am
personally familiar with Apple’s safeguarding of proprietary information, but if the Court deems
this declaration insufficient, Apple respectfully requests that it be permitted to file a further
declaration supporting filing under seal.

4. The Court has “broad latitude” “to prevent disclosure of materials for many types of information, including, *but not limited to*, trade secrets or other confidential research, development, or commercial information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis in original).

5. The Court has expressed a desire for these proceedings to be public. To that end, Apple has carefully reviewed the parties’ exhibits, including PX-1047 and PX-2946, and now proposes only those redactions that are essential.

6. Here, Apple seeks only to seal non-public financial and business information that, if disclosed, would put Apple at a competitive disadvantage, and that the Court has already ordered sealed in a separate order.

7. Specifically, Exhibit PX-1017 contains non-public financial data related to commissions and effective commissions on all App Store transactions. The Court has already ordered this data sealed at Figure 25 of the Written Direct Rebuttal Testimony of Michael I. Cragg, Ph.D. *See id.* at 6 (order sealing Cragg Rebuttal Figure 25 because it “contains Apple’s confidential financial information”); *see also* Dkt. 509-11 at 46 (unredacted Cragg Figure 25 containing same, now-sealed non-public Apple confidential financial information reflected in Exhibit PX-1017). Likewise, Exhibit PX-2946 contains non-public business information related to changes in average user spending on iOS game apps. The Court has already ordered this data sealed at Figure 4 of the Written Direct Rebuttal Testimony of Michael I. Cragg, Ph.D. *See* Dkt. 614 at 5 (order sealing Cragg Rebuttal Figure 4 because it “contains Apple’s confidential business information”); *see also* Dkt. 509-11 at 17 (unredacted Cragg Figure 4 containing same, now-sealed non-public Apple confidential business information reflected in Exhibit PX-2946). Disclosure of the (already-sealed) confidential financial and business information contained in Exhibits PX-1017 and PX-2946 would put Apple at a competitive disadvantage.

8. I have met and conferred in good faith with counsel for Epic, including by telephone, in an effort to narrow the documents and testimony that the parties propose to maintain under seal in this action. This process has resulted in narrowing the amount of designated confidential material.

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1 I declare under penalty of perjury under the laws of the United States that the foregoing is true
2 and correct and that this Declaration was executed on May 24, 2021 at Oakland, California.

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4 /s/ Rachel S. Brass

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